IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 13296 of 2005

Between:

1 Habibunnisa Begum, Wife of Md.Hashimuddin Farooqui
R/o.6-3-1239/1/1, Situated at Raj Bhavan Road, Somajiguda, Hyderabad
2 Mohammed Sohailuddin Farooqui S/o.Md.Hashimuddin Farooqui R/o.6-3-1239/1/1, Situated at Raj Bhavan Road, Somajiguda, Hyderabad

..... PETITIONERS

AND

The Municipal Corporation of Hyderabad Represented by its Commissioner, having its office at M.C.H. Complex, Tank Bund, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction, preferably a writ in the nature of mandamus declaring the action of the respondent in acquiring or dispossessing or demolishing the property by the Municipal Corporation of Hyderabad from acquiring the property or demolishing the gate without giving notice or following due process of law as illegal, unjust, void and contrary to law and direct the respondents not to demolish or dispossess or acquire the property bearing Municipal No.6-3-1239/1/1, situated at Raj Bhavan Road, Somajiguda, Hyderabad of the petitioners without following the due process of law and pass such other order or orders.

Counsel for the Petitioners: MR.ASADULLA PASHA

Counsel for the Respondent: SMT.G.JYOTHI KIRAN

The Court at the stage of admission made the following :

ORAL ORDER:

This writ petition is filed seeking a direction to the respondents not to demolish or dispossess or acquire the property bearing Municipal No.6-3-1239/1/1, situated at Raj Bhavan Road, Somajiguda, Hyderabad of the petitioners without following the due process of law.

The facts of the writ petitioner go to show that the petitioners are the owners and possessors of the premises admeasuring about 942.05 Sq. yards (including built up area), bearing Municipal No. 6-3-1239/1/1, situated at Raj Bhavan Road, Somajiguda, Hyderabad.

It is their grievance that in the first week of June 2005, the officials of the respondent and stated that the road widening work was to be carried out on the road leading from Raj Bhavan to Rajiv Gandhi Statue at Somajiguda and requested that the petitioners should give their consent for surrendering the land affected in the proposed road widening. In that connection the petitioners addressed a letter dated 17.6.2005 to the respondent for serving a notice on them and to state what were the benefits that would accrue to the petitioners in the event of their surrendering the property for the proposed road widening.

It is their further grievance that on 17.6.2005, the officials of the respondent-Corporation had illegally demolished a part of the said property and further threatened the petitioners to demolish the gate to the said property. Hence the present writ petition.

Learned counsel for the petitioner submitted that in a similarly situate case, a Division Bench of this Court in *PILLI LAKSHMAN RAO & ORS, VS. EXECUTIVE OFFICER, GRAM PANCHAYAT, CHALLAPELLE & OTHERS* issued certain guidelines, wherein it was observed that

> *"If the authorities, viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupant/s calling upon him/them to show cause as to why the proposed action shall not be taken. In receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property ;in question belongs to the Government or any other local self Government authority or to the occupant/s. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned*

shall determine the loss caused to the occupant/s on the basis of the assessment to be made by the engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupant/s is/are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this Order calling upon the claimant/occupant/s to show-cause as to why the action proposed shall not be taken by giving 60 days time to file the objections, if any. The person interested viz., the occupant/s shall submit him/their objections or explanation within the time stipulated together with any other documents he/they would like to rely upon in support of his their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupant/s shall produce all the evidence which he/they wants/want to rely upon before the Mandal Revenue Officer on the appointed day. (para 8)

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupant/s. In cases of demolition, the loss caused shall have to be assessed by the engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupant/s or the person/s interest on the date notified by the concerned officer. The occupant/s shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date." (para 9)

Therefore, this writ petition is also disposed of at the stage of admission with a direction to the respondent to follow the observations made and directions issued by the Division Bench of this Court in the case referred to supra. No costs.

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kvsn 21-06-2005

To

1. The Commissioner, Municipal Corporation of Hyderabad, M.C.H. Complex, Tank Bund, Hyderabad.

2. Two CCs to Standing counsel for Muncipal Corporation, Hyderabad.

3. Two CD copies.